

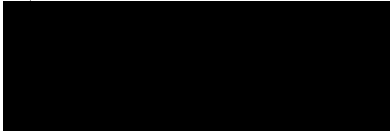
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U.S. Department of Homeland Security
Citizenship and Immigration Services

B6

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, Rm 3042
425 I Street, N.W.
Washington, DC 20536

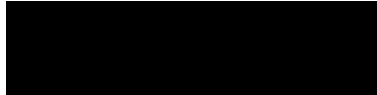


File: EAC 01 166 51002 Office: VERMONT SERVICE CENTER

Date:

MAR 22 2004

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:




INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal, affirming the director's decision. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion will be granted. The previous decisions of the director and AAO will be affirmed. The petition will be denied.

The petitioner is a multi-lingual Asian advertising firm. It seeks classification of the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3), and it seeks to employ the beneficiary permanently in the United States as a production manager. The director determined that the petitioner had not established that the beneficiary had the minimum educational requirement as stated on the Form ETA 750 Application for Alien Employment Certification.

In support of the motion, counsel submits a statement.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

8 CFR § 204.5(1)(3)(ii) states, in relevant part:

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational . . . requirements of the individual labor certification.

(C) *Professionals.* If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.

The Form ETA 750 submitted in this matter states that the position

requires four years of college resulting in a bachelor's degree in graphic design. Eligibility in this matter hinges on the petitioner demonstrating that the beneficiary was qualified for the proffered position on the priority date, the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the request for labor certification was filed on September 8, 2000. Part B of the Form ETA 750 states that the beneficiary has a certificate in commercial design from the First Institute of Art and Design in Hong Kong.

With the petition, counsel submitted a copy of the beneficiary's diploma, showing that she was awarded a certificate in Commercial Design on June 1, 1985. Counsel also submitted a report, dated May 16, 1996, from an educational evaluator. The reports states that the beneficiary's transcript verifies that she completed the **three-year Graphic Design Course**. The report states that the beneficiary's certificate is "equivalent to completion of a three or four-year graphic design program from a private art institute in the United States," but does not state that it is the equivalent of a bachelor's degree.

The evaluation continues that, according one year of education for each three years of professional experience, the beneficiary's education plus her experience are the equivalent of a bachelor's degree in graphic design from an accredited college or university in the United States.

Because the evidence did not demonstrate that the beneficiary had a bachelor's degree in graphic design or an equivalent foreign degree, the Service Center requested additional evidence in this matter.

The request noted that the Form ETA 750 states that the position requires a bachelor's degree, and that the beneficiary must therefore possess a bachelor's degree or an equivalent foreign degree. The request further noted that an equivalent based on combined education and experience is unacceptable. The Service Center requested that the petitioner demonstrate that the beneficiary possessed the requisite degree on the priority date and submit copies of her educational transcripts.

In response, counsel submitted what purports to be a transcript from the "Frist (sic) Institute of Art and Design." The transcript states,

This is to confirm that CHEUN SHI MING (PATRICIA) the four-year Graphic Design (sic) programme at Frist (sic) Institute of Art and Design from May 1981 to June 1985 and graduated with a diploma in 1985.

The transcript also lists 30 classes which the beneficiary is alleged to have taken and passed. A space is provided for the signature of the Dean of Faculty, but the transcript is unsigned and undated. In a cover letter, dated November 30, 2001, counsel states that the beneficiary's diploma establishes that she "possessed her B.A. well prior to September 8, 2000."

The director determined that the evidence submitted did not establish that the beneficiary has the required bachelor's degree and denied the petition on April 16, 2002.

On appeal, counsel argued that the petition is for a skilled worker pursuant to Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), and that the beneficiary need not, therefore, possess a bachelor's degree.

The AAO noted that the petitioner must demonstrate that the beneficiary is qualified for the proffered position pursuant to the terms of the approved Form ETA 750, which clearly states that the position requires a bachelor's degree in graphic design. The AAO found that the evidence submitted does not demonstrate that the beneficiary has a bachelor's degree in graphic design or an equivalent foreign degree, and dismissed the appeal on October 30, 2002.

On motion, counsel states that the educational evaluation submitted makes clear that, even without consideration of the beneficiary's employment experience, the beneficiary's certificate in commercial design is the equivalent of a United States bachelor's degree in graphic design.

Counsel is incorrect. The educational evaluation, counsel's own evidence, does not state that the beneficiary's certificate in commercial design is the equivalent of a bachelor's degree. It states that the beneficiary required four years to complete the degree, but that it is a three-year course of study. It also states that the certificate is "equivalent to completion of a three or four-year graphic design program from a private art institute in the United States, but not that it is equivalent to a bachelor's degree in graphic design.

The documentation submitted does not establish that the beneficiary has a bachelor's degree in graphic design or an equivalent foreign degree. Therefore, the objection of the AAO has not been overcome on the motion.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the previous

decisions of the director and the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of October 30, 2002 is affirmed.
The petition is denied.